



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 12, 1995

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR95-1400

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36977.

The McAllen Police Department (the "department") received an open records request for "routine, on-going, access to the police department's daily dispatch logs."<sup>1</sup> You contend the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.108 excepts records from required public disclosure only where the release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 287 (1981). When this section is raised, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how the release of the information would unduly interfere with law enforcement. Open Records Decision No. 287 (1981). Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). You have not demonstrated, nor is it apparent from the face of the documents, how the release of this information would unduly interfere with law enforcement.

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<sup>1</sup>This office agrees with your contention that the Open Records Act does not require a governmental body to comply with a standing request for information to be collected or prepared in the future. See Attorney General Opinion JM-48 (1983). However, because there is nothing to prevent the requestor from making daily requests for newly created dispatch logs, this office will rule on the records you have submitted to this office as being representative of the types of records the requestor may seek in the future.

We further note that in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle*). Similarly, we conclude that none of the requested information may be withheld pursuant to section 552.108.

We next address your contentions under section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You first suggest that this office apply the same legal analysis to the dispatch records as that used by the court in *Direct Mail Marketing, Inc. v. Morales*, No. H-95-4234 Civ. 1995 (S.D. Tex. Oct. 5, 1995). In *Direct Mail*, the court addressed the constitutionality of House Bill 391, which places certain restrictions on public access to "all accident reports made as required by [V.T.C.S. art. 6701d] or [V.T.C.S. art. 6701h]." (Emphasis added.) See Act of May 27, 1995, 74th Leg., R.S., ch. 894, 1995, Texas Sess. Law Serv. 4413 (to be codified as an amendment to article 6701d, § 47, V.T.C.S.). The court held that the proposed amendment to article 6701d was not unconstitutional and thus denied the application for a preliminary injunction against enforcement of the amendment.

However, House Bill 391 restricts public access only to certain accident reports, and not to police dispatch logs such as those at issue here. Consequently, the court's ruling in *Direct Mail* has no bearing on whether the public may have access to the type of records being sought by the requestor.

Citing Open Records Decision No. 394 (1983) as authority, you contend that "dispatches involving juveniles" must be withheld from the public pursuant to section 51.14(d) of the Family Code.<sup>2</sup> We generally agree that any dispatch information involving "delinquent conduct" or "conduct indicating a need of supervision" must be withheld from the general public pursuant to section 51.14(d).<sup>3</sup> But see Fam. Code § 51.03 (excluding information pertaining to routine juvenile traffic violations from confidentiality provisions).

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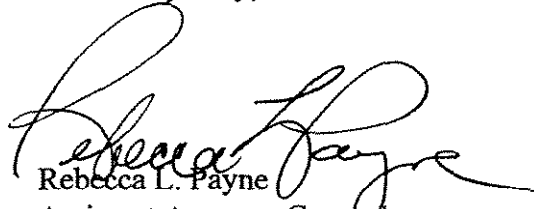
<sup>2</sup>We note that in the recent legislative session, the 74th Legislature repealed section 51.14 of the Family Code and substantially revised it as part of Chapter 58 of the code, effective January 1, 1996. See Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 53, 100, 105, 106, 1995 Tex. Sess. Law Serv. 2517, 2549-53, 2590-91 (Vernon). We do not address in this ruling the effect of the legislature's action on requests made on or after January 1, 1996.

<sup>3</sup>See also Fam. Code § 51.14(c) (requiring all "law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults"). We do not address here whether juvenile and adult dispatch information may properly be recorded together.

Finally, you suggest that some dispatch information may be protected under common-law privacy as incorporated into section 552.101 of the Government Code. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. You have not explained how the limited type of information contained in dispatch records would meet this test, and after reviewing the records submitted to this office, we conclude that none of the information contained in those records may be withheld under common-law privacy without additional briefing. See Open Records Decision No. 394 (1983) at 4 ("Questions relating to the application of the common law right of privacy are necessarily factual in nature and can only be resolved on a case-by-case basis.")

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Rebecca L. Payne  
Assistant Attorney General  
Open Records Division

RLP/RWP/rho

Ref.: ID# 36977

Enclosures: Submitted documents

cc: Mr. Larry J. Laurent  
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(w/o enclosures)